IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 261 OF 2002.

1. The Executive Engineer (IV),
Electricity Department,
Aquem, Margao.

2. The Chief Engineer,
Electricity Department,
Vidyut Bhawan,
Panaji, Goa.

3. The State of Goa,
represented by the
Chief Secretary,
having office at the
Secretariat Bldg.,
Panaji, Goa.

4. Mamlatdar of Salcete and
Revenue Recovery Officer,
Margao, Salcete, Goa. .... Appellants.

VERSUS

M/s. Sunrise Zinc Ltd.,
Registered Company,
under the Companies Act, 1956
having its Regd. Office at L-2-3,
Cuncolim Industrial Estate,
Cuncolim, Goa. ..... Respondents.

Shri P. Kamat, Government Advocate for the Appellants.

Shri Y.V. Nadkarni, Advocate for the Respondents.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE: 3rd NOVEMBER, 2004.

ORAL JUDGMENT: (PER MARLAPALLE, J.)

This appeal arises from the Judgment and Decree dated 21.3.2002

passed by the learned Third Addl. Civil Judge, Senior Division at Margao in Special Civil Suit No. 149/1999 in which the appellants were the defendants.

2. The plaintiffs, consumer of electric power (extra high tension) was served with supplementary bill for energy charges towards the alleged consumption from March, 1998 to September, 1999 and this amount came to Rs.7,78,548/-. The other supplementary bills for July, 1998, November, 1997 to October, 1998 and November, 1998 to May, 1999 were also issued and totally amounting to Rs.7,80,69,162/- as was demanded by letter dated 28.6.2000. Both these demands were challenged in the said Suit praying for declaration that the bills were illegal and without authority in law. The Trial Court framed issues as regards the legality of the demand of additional charges of Rs.10,89,937/- Rs.7,80,69,162/- and Rs. 1,40,76,908/-. On assessment of the evidence it held that the plaintiffs have proved that these bills/demands were illegal and therefore consequently the Notices dated 17.12.99 and 22.2.2000 issued by the defendant No.4 were without any authority of law. An additional issue as to whether the defendants proved that the plaintiffs were found tampering with the meter equipment and therefore they were justified to disconnect power supply on 19.8.99 was also framed and answered in the negative. The plaintiffs had examined their Director Shri Pankaj Jaju and had produced on record voluminous documents like supplementary bills, suit agreement, correspondence between the plaintiffs and the defendants and the notices issued by the Mamlatdar, etc. The defendants had examined D.W.1 Shri Shashidatta, Asst. Engineer(Vigilance), D.W.2 Shri D.M. Archarya, D.W.3 Shri B.F. Alvares and D.W.4 Shri Fal Dessai. On assessment of the oral and

documentary evidence and on considering the authorities cited before the Bar, the trial Court decreed the suit with costs and held that the demands under challenge were illegal. The Notices dated 17.12.99, 22.2.2000 and 6.2.2000 were held to be without authority of law. The trial Court further proceeded to issue the following directions by way of restraining orders:-

(a) The defendant no.1 is hereby restrained from raising any bill under the garb of charges for additional consumption when the electronic meter installed in the premises of the plaintiff by the defendant no.1 is flawlessly functioning and shows true consumed electrical energy.

(b) It is further declared that the plaintiffs are entitled to get back from the defendants the amounts of instalments paid by them as under protest, if any, against the suit supplementary bills during the pendency of this suit. Further, the defendants are hereby directed to maintain status quo as on this date i.e. 21.3.2002 and not to disconnect the power supply of the plaintiff's installation which has been reconnected on 2.12.2000.

3. On hearing the learned Government Advocate and the learned counsel for the plaintiffs and on assessment of the evidence that was placed before the trial Court, we do not find any merit in the challenge to the decree to the extent of holding the supplementary bills/demands of Rs.10,89,937/-, Rs.1,40,76,908/- and Rs.7,80,69,162/- as illegal and holding the concerned Notices to be without authority of law. However, the subsequent injunction that the trial Court had issued is unsustainable to some extent. Blanket restraining orders could not

have been passed against the Government which supplies electricity. It is possible that in future the Department responsible for energy supply may instal modern equipments for checking and measuring the energy pilferage and it need not depend upon the electronic meters installed in the premises of the plaintiffs and in fact such equipments are very common nowadays. Similarly when the Electricity Department issues supplementary bills on the basis of detection of pilferage by such equipments, it is entitled to disconnect electric supply on failure to meet the demand of the supplementary bills. Therefore the restraining order passed above at (a) and the underlined portion at (b) does not appear to be in consonance with the recognized legal right of the Electricity Department. This also is obvious from the supply agreement entered into between the parties.

4. We, therefore, allow this appeal partly and set aside the Order of injunction granted in the following words :-

(a) The defendant no.1 is hereby restrained from raising any bill under the garb of charges for additional consumption when the electronic meter installed in the premises of the plaintiff by the defendant no.1 is flawlessly functioning and shows true consumed electrical energy.

(b) ..... Further, the defendants are hereby directed to maintain status quo as on this date i.e. 21.3.2002 and not to disconnect the power supply of the plaintiff's installation which has been reconnected on 2.12.2000.

Remaining part of the impugned Decree is confirmed.

5. We also clarify that the pending Criminal Case filed by the present appellants against the plaintiffs shall be decided on its own merits and without being influenced by any observations made in the Decree passed by the trial Court. Costs in the cause.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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